Trumbull Memorial Hospital and Western Reserve Personnel, Inc. and Service Employees International Union Local 627, Petitioner. Case 8–RC– 16381

April 3, 2003

DECISION ON REVIEW AND ORDER

By Chairman Battista and Members Schaumber and Walsh

On May 28, 2002, the Regional Director for Region 8 issued a Decision and Direction of Election in which he found that the telephone operators employed in the joint project known as the Trumbull Answering Service (TAS) constituted an appropriate voting group and directed an election to determine their inclusion in an existing unit of Trumbull Memorial Hospital (TMH) business group employees already represented by the Petitioner. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, TMH filed a timely request for review of the Regional Director's decision. On June 19, 2002, the Board granted TMH's request for review.

Having carefully considered the entire record in this proceeding, we conclude, contrary to the Regional Director, that the TAS employees do not share a sufficient community of interest with the TMH business office employees to warrant their inclusion in the business office unit.

TMH is an Ohio corporation operating an acute care facility in Warren, Ohio. It is a fully owned subsidiary of Forum Health (Forum). Western Reserve Personnel (WRP) is an Ohio corporation providing employees to companies such as TMH. WRP has an office and place of business in Cortland, Ohio.

The Petitioner and TMH are parties to a collectivebargaining agreement in which TMH recognizes the Petitioner as the exclusive representative of its business clerical employees, including those who work in information technology, accounting, and as telephone operators.

TMH created TAS in 1989 as an answering service for its doctors, and TAS has taken on additional clients since then. TAS has never directly hired the employees who work for it. At first, TAS was staffed by TMH employees employed through Home Healthcare, a division of TMH. TMH later decided to staff TAS with employees supplied by WRP. There is no written contract between TMH and WRP covering the staffing of TAS.

TAS is physically located at TMH in the business group area. The TAS employees work in a room adjacent to, and connected by an open portal with, the room used by bargaining unit telephone operators directly employed by TMH. The main duties of TAS operators are to take messages for clients, type them into a computer, and then deliver the messages by pager, fax machine, or telephone to the clients. TMH operators take calls from the general public and forward those calls within TMH. Unlike the TAS operators, the TMH operators do not necessarily take messages.

The midnight TMH operator handles TAS calls from 1 to 5 a.m. TMH has a policy against employees working for both TMH and TAS, although one exception has been made for a longtime employee.

The Regional Director found that TMH and WRP were joint employers of the petitioned-for employees.¹ He then applied the analytical framework articulated by the Board in *M.B. Sturgis, Inc.*² He found that the petitioned-for employees share a sufficient community of interest with the TMH business office employees to warrant inclusion in that unit. Based on our review of the record, we reverse the Regional Director's community-of-interest finding and therefore dismiss the petition.

In concluding that the petitioned-for TAS operators share a sufficient community of interest with the TMH telephone operators, the Regional Director relied principally on his finding that Karen Brooks was the "key supervisor" with respect to both groups of operators. Although we agree with the Regional Director's finding that Brooks supervises the TAS employees, the record does not establish that she supervises the TMH operators.

Brooks was employed by TMH until January 1, 2000. Since that time, she has been employed by Forum as its voice communications administrator, with responsibility for all telephone systems throughout Forum. Forum has about 4500 employees at several different locations. Brooks' responsibilities include auditing, billing procedures, maintenance contracts, and long distance services.

The record is silent as to the supervisory structure over the TMH operators. Although the Regional Director found that Brooks maintains responsibility for the TMH operators and that she maintains supervisory oversight of them, the record is insufficient to support those findings. Brooks did formerly supervise the TMH operators, but the record does not establish that she continues to do so. Further, although TMH is a wholly owned subsidiary of Forum, there is no finding or contention that they are a single employer.

¹ No party has filed a request for review of this finding.

² 331 NLRB 1298 (2000). Chairman Battista and Member Schaumber accept arguendo the validity of *Sturgis*. That case teaches that there would be no statutory bar to including the joint employees of TMH and WRP with the employees of TMH. However, as shown below, there is an insufficient community of interest between the two groups.

It is true, as the Regional Director found, that the two groups of employees have similar skills and work in close proximity to each other, and that there is some interchange between the two groups. The Regional Director also correctly pointed out that the employees share certain privileges (for example, a cafeteria discount and parking privileges) and wear TMH-issued pagers and the same type of identification badges.

In our view, however, these factors are outweighed by others. Thus, as noted, the principal factor relied on by the Regional Director, that of common supervision, is not supported by the record. Further, as the Regional Director noted, the two groups of employees receive dissimilar wages and benefits.³ In addition to differences in wages, the TAS employees are not covered by TMH's retirement plan, by its hospitalization plan, by its vacation

policies, by its disciplinary rules, by its seniority rules, or by its job posting rules.

Further, as noted above, the two groups of employees do not serve the same clientele. Thus, TMH operators serve primarily the hospital and its patients and employees. TAS employees serve doctors on the hospital staff and other clients not connected to the hospital. We also note TMH's general policy against employees working for both TMH and TAS.

In these circumstances, we conclude that the TAS employees do not share a sufficient community of interest with the TMH business group employees to be included in the existing bargaining unit.

ORDER

For the reasons set forth above, we find that the petitioned-for unit may not be included in the existing unit of TMH business group employees. Accordingly, we dismiss the petition.

³ The record is not clear as to the role of each employer in setting the wages and benefits for the TAS employees.